

Calendar No. 413

103D CONGRESS
2D SESSION

S. 1904

A BILL

To amend title 38, United States Code, to improve the organization and procedures of the Board of Veterans' Appeals.

APRIL 14 (legislative day, APRIL 11), 1994
Reported with amendments

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To amend title 38, United States Code, to improve the organization and procedures of the Board of Veterans' Appeals.

IN THE SENATE OF THE UNITED STATES

MARCH 8 (legislative day, FEBRUARY 22), 1994

Mr. ROCKEFELLER (for himself, Mr. MURKOWSKI, Mr. DECONCINI, Mr. GRAHAM, Mr. AKAKA, Mr. DASCHLE, Mr. CAMPBELL, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

APRIL 14 (legislative day, APRIL 11), 1994

Reported by Mr. ROCKEFELLER, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend title 38, United States Code, to improve the organization and procedures of the Board of Veterans' Appeals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. ORGANIZATION AND PROCEDURES OF BOARD**
2 **OF VETERANS' APPEALS.**

3 (a) NUMBER OF MEMBERS.—Subsection (a) of sec-
4 tion 7101 of title 38, United States Code, is amended by
5 striking out “(not more than 65)”.

6 (b) ACTING AND TEMPORARY MEMBERS.—(1) Such
7 section is further amended—

8 (1) in subsection (c)—

9 (A) by striking out paragraph (1) and in-
10 serting in lieu thereof the following new para-
11 graph (1):

12 “(1)(A) The Chairman may from time to time des-
13 ignate one or more employees of the Department to serve
14 as acting members of the Board. Except as provided in
15 subparagraph (B), any such designation shall be for a pe-
16 riod not to exceed 90 days, as determined by the Chair-
17 man.

18 “(B) An individual designated as an acting member
19 of the Board may continue to serve as an acting member
20 of the Board in the making of any determination on a
21 proceeding for which the individual was designated as an
22 acting member of the Board, notwithstanding the termi-
23 nation of the period of designation of the individual as
24 an acting member of the Board under subparagraph (A)
25 or (C).

1 “(C) An individual may not serve as an acting mem-
 2 ber of the Board for more than 270 days during any 1-
 3 year period.”;

4 (B) by striking out paragraph (2);

5 (C) by redesignating paragraph (3) as
 6 paragraph (2); and

7 (D) in paragraph (2), as so redesignated,
 8 by striking out “the number of temporary
 9 Board members” and all that follows through
 10 the period at the end and inserting in lieu
 11 thereof “the number of acting members of the
 12 Board designated under such paragraph (1)
 13 during the year for which the report is made.”;
 14 and

15 (2) in subsection (e), by striking out “a tem-
 16 porary or” and inserting in lieu thereof “an”.

17 (c) REPORT ON BOARD ACTIVITIES.—Subsection (d)
 18 of such section is amended—

19 (1) in paragraph (2)—

20 (A) by striking out “and” at the end of
 21 subparagraph (D);

22 (B) by striking out the period at the end
 23 of subparagraph (E) and inserting in lieu there-
 24 of “; and”; and

1 (C) by adding at the end the following new
2 subparagraph:

3 “(F) the number of employees of the Depart-
4 ment designated under subsection (c)(1) of this sec-
5 tion to serve as acting members of the Board during
6 that year and the number of cases in which each
7 such member participated during that year.”; and

8 (2) in paragraph (3)(B), by striking out “as re-
9 quired by section 7103(d) of this title”.

10 (d) APPEALS DECISIONS.—(1) Chapter 71 of such
11 title is amended by striking out sections 7102 and 7103
12 and inserting in lieu thereof the following new sections
13 7102 and 7103:

14 **“§ 7102. Decisions by the Board**

15 “A proceeding instituted before the Board may be as-
16 signed to one or more members of the Board. A proceeding
17 assigned to more than one member shall be assigned to
18 a panel of not less than three members of the Board. A
19 member or panel assigned a proceeding shall make a de-
20 termination thereon, including any motion filed in connec-
21 tion therewith. The member or panel, as the case may be,
22 shall make a report under section 7104(d) of this title on
23 any such determination, which report shall constitute the
24 final disposition of the proceeding by the member or panel.

1 **“§ 7103. Reconsideration; correction of obvious errors**

2 “(a) Subject to subsections (b) and (c) of this section,
3 the decision of the Board determining a matter under sec-
4 tion 7102 of this title is final.

5 “(b) The Chairman may order reconsideration of the
6 decision in a case in accordance with subsection (c) of this
7 section. Such an order may be made on the Chairman’s
8 initiative or upon motion of the claimant.

9 “(c)(1) Upon the order of the Chairman for reconsid-
10 eration of a decision in a case, the case shall be referred—

11 “(A) in the case of a matter originally heard by
12 a single member of the Board, to a panel of not less
13 than three members of the Board.

14 “(B) in the case of a matter originally heard by
15 a panel of members of the Board, to an enlarged
16 panel of the Board.

17 “(2) A panel referred to in paragraph (1) of this sub-
18 section may not include the member or members who
19 made the original decision subject to reconsideration.

20 “(3) A panel reconsidering a matter under this sub-
21 section shall render its decision after reviewing the entire
22 record before the Board. The decision of a majority of the
23 members of the panel shall be final.

24 “(d) The Board on its own motion may correct an
25 obvious error in the record, without regard to whether
26 there has been a motion or order for reconsideration.”.

1 (2) The table of sections at the beginning of such
 2 chapter is amended by striking out the items relating to
 3 sections 7102 and 7103 and inserting in lieu thereof the
 4 following:

“7102. Decisions by the Board.

“7103. Reconsideration; correction of obvious errors.”.

5 (e) PROCEDURES RELATING TO APPEALS.—(1)(A)
 6 Section 7107 of such title is amended to read as follows:

7 **“§ 7107. Appeals: dockets; hearings**

8 “(a)(1) All cases received pursuant to application for
 9 review on appeal shall be considered and decided in regu-
 10 lar order according to their places upon the docket.

11 “(2) A case referred to in paragraph (1) of this sub-
 12 section may, for cause shown, be advanced on motion for
 13 earlier consideration and determination. Any such motion
 14 shall set forth succinctly the grounds upon which it is
 15 based and may not be granted unless the case involves
 16 interpretation of law of general application affecting other
 17 claims, or for other sufficient cause shown.

18 “(b) The Board shall decide any appeal only after af-
 19 fording the appellant an opportunity for a hearing.

20 “(c) A hearing docket shall be maintained and formal
 21 recorded hearings shall be held by such member or mem-
 22 bers of the Board as the Chairman may designate. Such
 23 member or members designated by the Chairman to con-

1 duct the hearing shall participate in making the final de-
2 termination of the claim.

3 “(d)(1) An appellant may request a hearing before
4 the Board at its principal location or at a ~~regional office~~
5 ~~of the Department~~ *location within the area served by a*
6 *regional office of the Department.*

7 “(2)(A) Except as provided in subparagraph (B) of
8 this paragraph, hearings *requested within an area served*
9 *by a regional office of the Department* shall be scheduled
10 in the order in which requests for ~~such hearings~~ *hearings*
11 *within that area* are received by the Department.

12 “(B) In a case in which the Secretary is aware that
13 the appellant is seriously ill or is under severe financial
14 hardship, a hearing may be scheduled at a time earlier
15 than would be provided for under subparagraph (A) of this
16 paragraph.

17 “(e)(1) At the request of the Chairman, the Secretary
18 may provide suitable facilities and equipment to the Board
19 or other components of the Department to enable an ap-
20 pellant located at a facility within the area served by a
21 regional office to participate, through voice transmission
22 or through picture and voice transmission, by electronic
23 or other means, in a hearing with a Board member or
24 members sitting at the Board’s principal location.

1 “(2) When such facilities and equipment are avail-
2 able, the Chairman may afford the appellant an oppor-
3 tunity to participate in a hearing before the Board
4 through the use of such facilities and equipment in lieu
5 of a hearing held by personally appearing before a Board
6 member or panel as provided in subsection (d) of this sec-
7 tion. Any such hearing shall be conducted in the same
8 manner as, and shall be considered the equivalent of, a
9 personal hearing. If the appellant declines to participate
10 in a hearing through the use of such facilities and equip-
11 ment, the opportunity of the appellant to a hearing as pro-
12 vided in such subsection (d) shall not be affected.”.

13 (B) The item relating to section 7107 in the table
14 of sections at the beginning of chapter 71 of such title
15 is amended to read as follows:

“7107. Appeals: dockets; hearings.”.

16 (2)(A) Section 7110 of such title is repealed.

17 (B) The table of sections at the beginning of chapter
18 71 of such title is amended by striking out the item relat-
19 ing to section 7110.

20 (f) TECHNICAL CORRECTION.—Section 7104(a) of
21 such title is amended by striking out “211(a)” and insert-
22 ing in lieu thereof “511(a)”.